

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

KHOA DANG NGUYEN,

CASE NO. 5:14-cv-01567 EJD

ORDER RE: SERVICE OF PROCESS

Plaintiff(s),

v.

THE GENERAL INSURANCE,

Defendant(s).

On July 17, 2014, Plaintiff Khoa Dang Nguyen (“Plaintiff”) filed a Certificate of Service indicating that Defendant The General Insurance (“Defendant”) was sent, by mail, copies of “all the Summons, and Motion letter and Declaration of Facts.” See Docket Item No. 13. The court finds this method of service ineffective for the reasons explained below.

“A federal court does not have jurisdiction over a defendant unless the defendant has been served properly under Fed. R. Civ. P. 4.” Direct Mail Specialists v. Eclat Computerized Techs., Inc., 840 F.2d 685, 688 (9th Cir. 1988); see also Murphy Bros., Inc. v. Mitchell Pipe Stringing, Inc., 526 U.S. 344, 350 (1999) (“Service of process, under longstanding tradition in our system of justice, is fundamental to any procedural imposition on a named defendant.”). Mere notice that a lawsuit is pending is not sufficient. Rohit Biochem Pvt. Ltd. v. Arya Group, Inc., No. CIV S-07-1575 FCD GGH, 2009 U.S. Dist. LEXIS 48740, at *3, 2009 WL 1635175 (E.D. Cal. June 10, 2009) (citing Omni Capital Int’l, Ltd. v. Rudolf Wolff & Co., Ltd., 484 U.S. 97, 104 (1987)).

Unless waived, Federal Rule of Civil Procedure 4(h) requires service of process on an out-of-

1 state corporation be accomplished by one these methods: (1) following the service law of either the
2 state the district court is located or the state where service is made; or (2) by delivering a copy to an
3 agent authorized by appointment or by law to receive service of process.

4 Under California law, service by mail on an out-of-state corporation is sufficient only if a
5 copy of the summons and the complaint is sent to the corporation's "president, chief executive
6 officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a
7 treasurer or assistant treasurer, a controller or chief financial officer, a general manager, or a person
8 authorized by the corporation to receive service of process" by first-class mail, postage prepaid, with
9 a return receipt. Cal. Civ. Proc. Code §§ 415.40; 416.10; see also Dill v. Berquist Constr. Co., 24
10 Cal. App. 4th 1426, 1441 (1994) (finding mail service ineffective when the envelope was addressed
11 to corporation rather than to individual authorized to accept service on behalf of the corporation).
12 Tennessee law, which applies due to Defendant's location, contains identical requirements for
13 service by mail. See Tenn. R. Civ. P. 4.04(10).

14 Here, it appears Plaintiff attempted service on Defendant by simply mailing the documents to
15 the corporation itself. But, as noted, this type of service does not comply with either California or
16 Tennessee law because it was not directed to *an individual* designated to accept service on behalf of
17 Defendant and was not sent along with a *request for return receipt*.

18 Because service has not been properly effectuated, the Case Management Conference
19 scheduled for September 5, 2014, is VACATED, and Plaintiff's motion filed on August 4, 2014
20 (Docket Item No. 16), is TERMINATED.


21 The court will allow Plaintiff one additional opportunity to complete service on Defendant.
22 Plaintiff must re-serve Defendant through an authorized method of service consistent with the
23 discussion above and must file proof of such of service in a manner that conforms to Federal Rule of
24 Civil Procedure 4(l) on or before **September 16, 2014**. Plaintiff is advised that the court will
25 dismiss this action pursuant to Federal Rule of Civil Procedure 4(m) if proof of proper service is not
26 filed by the designated deadline or if service is again non-compliant.

27 The court strongly recommends that Plaintiff seek legal assistance in completing service of
28 process. Such assistance may be available through The Federal Legal Assistance Self-Help Center

1 at the San Jose Courthouse (FLASH). Appointments can be made Mondays through Wednesdays by
2 calling (408) 297-1480.

3 **IT IS SO ORDERED.**

4
5 Dated: September 2, 2014


EDWARD J. DAVILA
United States District Judge

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28